CF0000063557

(2)

Division Bench (riminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

CRIMINAL APPEAL NO. 1307 OF 2000.

APPELLANT (IN JAIL) :: Teejan Ram S/O Ramvraksha, Caste Bari, aged 34 years, Occupation Cultivator, resident of village Padiya, P.S. Pratappur, District Sarguja, (M.P.).

(V e r s u s)

RESPONDENTS :: THE STATE OF M.P. through P.S. Pratappur, Distt. Sarguja, M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

CONVICTION

(19)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM : HON'BLE SHRI FAKHRUDDIN AND HON'BLE SHRI DHIRENDRA MISHRA, JJ.

CRIMINAL APPEAL NO.1307 OF 2000

Appellant (In Jail)	:	Teejan Ram
	versus	
Respondent	:	The State of M.P.

Present : Dr. Shailesh Ahuja, counsel for the appellant.
Mr. Sanjay Kumar Agrawal, Panel Lawyer for the respondent/State.

JUDGMENT
(Delivered on 3rd of July, 2006)

As Per Dhirendra Mishra, J. :

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the impugned judgment dated 28-4-2000 passed by learned Additional Sessions Judge, Surajpur in Sessions Trial No.319/98, by which the learned Additional Sessions Judge, after holding the appellant guilty for causing death of deceased Jagmohan, has convicted the appellant under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine, to undergo additional rigorous imprisonment for 1 year.

2. Case of the prosecution in brief is that P.W.-3, Hawalsai lodged a report, Ex.P-11 in the Police Station to the effect that the deceased Jagmohan

had sold his bullock to Vidhi Panka. He came at about 8 P.M. for taking the bullock, however, the wife Juganibai declined to hand over the bullock, and as a result of this, there was a quarrel between Teejan Ram and Jagmohan at about 12 o'clock in the night. After hearing some commotion, when he returned home, he found that Jagmohan was lying dead on the road. He had sustained axe-injury on the left cheek and blood was oozing out. Teejan Ram was sitting there with an axe and he confessed having murdered his brother Jagmohan. He confessed before Sarpanch Ramdas, Secretary Devlal, Panch Ram Patel Khiwaram. On the basis of this report, an offence under Section 302 of the Indian Penal Code was registered. During investigation, inquest of Ex.P-2 over the dead body of deceased was performed after due notice to the witnesses in their presence. Spot map was prepared vide Ex.P-3 by the Halka Patwari. The weapon of offence – axe was seized on the basis of information given by the appellant vide his memorandum of Ex.P-5 vide seizure memo of Ex.P-4. Plain soil and blood stained soil were also seized vide Ex.P-6 and P-7. A bamboo club was taken into possession from the spot vide Ex.P-8. Blood stained clothes of the appellant were seized vide Ex.P-10. Juganibai, the wife of the deceased was sent for medical examination vide Ex.P-12A, upon which, the doctor gave his report vide Ex.P-12 and found lacerated wound on the back of the right ear and swelling over mandibular angle and parotid region of right side. The doctor opined that the injury was simple in nature caused by hard and blunt object. The post mortem over the dead body was conducted by Dr. Ramlal Thakur, Primary Health Centre, Pratappur, Surguja. On external examination, the doctor noticed incised wound obliquely 6x3x4 cm. just percolate to below left side of mandible, second wound 4x2x2 cm. obliquely over occipital bone of head, blood clot was present over chin, face and chest. However, on internal examination, the doctor noticed that there was fracture of occipital bone and clotted blood was present over the brain. According to the opinion of the doctor, the death was due to

coma as a result of head injury caused by hard and sharp object and it was homicidal in nature. Accused Teejan Ram was also sent to Government Hospital Pratappur for examination and on examination the doctor noticed multiple bluish marks on the back of the accused and abrasion over left eye. The blood stained seized articles were sent to the Forensic Science Laboratory, Sagar for examination vide Ex.P-22. Report of the Forensic Science Laboratory, Sagar is Ex.P-23. As per the report of the Forensic Science Laboratory, the axe and underwear seized from the appellant contained blood.

3. After completing investigation, charge-sheet was filed in the Court of Additional Chief Judicial Magistrate, Surajpur, who, in turn, committed the case to the Court of Session at Ambikapur and the same was received on transfer by the learned Additional Sessions Judge for trial. Charge under Section 302 of the Indian Penal Code was framed against the appellant, who abjured the guilt. The prosecution, in order to prove the charge against the appellant, examined 8 witnesses in all and thereafter statement of the accused under Section 313 of the Code of Criminal Procedure was recorded, in which the appellant denied the circumstances appearing against him, pleaded innocence and false implication. The learned Additional Sessions Judge, however, after hearing the Public Prosecutor and the counsel for the appellant, convicted and sentenced the appellant as mentioned above.

4. The homicidal death of the appellant is not in dispute. Even otherwise from the statement of P.W.-6, Dr. Ramlal Thakur, who has conducted the post mortem over the dead body of the deceased and who has given his post mortem report of Ex.P-15 had noticed various injuries as mentioned above and has further opined the death to be homicidal in nature, the homicidal death of the deceased is established.

5. The Court below has based the conviction on the recovery of weapon of offence on the memorandum of the appellant and that the axe and underwear seized from the appellant contained blood and further considering the fact that Jagmohan died homicidal death and immediately after the incident several injuries were found on the person of the appellant as also blood stained axe and underwear were recovered from the appellant.

6. Learned counsel for the appellant submits that there is no legal evidence regarding involvement of the appellant in the crime in question. There is not an iota of evidence to show that on the date of the incident there was any quarrel between the appellant and the deceased and none of the witnesses examined by the prosecution have stated regarding any quarrel between Jagmohan and the appellant. Extensively referring to the statement of P.W.-5, Juganibai, the wife of the deceased, before whom quarrel regarding bullock allegedly took place between the appellant and the deceased, it is argued that this witness has categorically stated that in fact she declined to hand over the bullock to Vidhi Panka, as a result of which, her husband Jagmohan slapped her and thereafter she ran away from the place of incident and on returning she found the dead body of her husband. It is argued that even the presence of the appellant at the time of incident is not mentioned by this witness. Even P.W.-3, Hawalsai has not supported the case of the prosecution, who has lodged the First Information Report. However, the Court below has convicted the appellant solely on the basis of memorandum and recovery in pursuance of the memorandum of the blood stained axe, though there is no evidence that the axe contained human blood.

7. On the other hand, learned counsel for the State supports the impugned judgment.

8. We have heard learned counsel for the parties. We have gone through the material available on record and the impugned judgment.

9. After going through the statement of P.W.5, Juganibai as also P.W.-3, Hawalsai, who has lodged the report, we are of the considered opinion that there is no evidence available on record to show that there was any quarrel between the appellant and the deceased on the date of incident and thus a material circumstance, that the appellant and the deceased were engaged in a quarrel relating to handing over of the bullock to Vidhi Panka, is missing. Thus, in the absence of any evidence with respect to the origin of the crime, the appellant could not have been held guilty, solely on the basis of the alleged memorandum and recovery of the blood stained axe. So far as the injuries present over the person is concerned, the prosecution has been able to establish this fact by the injury report of the appellant, however, the prosecution has failed to adduce any evidence to connect the injuries present over the person with the incident and in the absence of any positive evidence in this regard, it is not possible to infer that the appellant might have assaulted the deceased, and in the process, might have sustained the injuries which were found on his body.

10. In the result, the impugned judgment of conviction and sentence dated 28-4-2000 cannot be sustained and the same deserves to be set aside and is accordingly set aside and the appeal is allowed and the appellant is acquitted of the charge under Section 302 of the Indian Penal Code. The appellant be set at liberty forthwith, if not required in any other case.

Sd/-
Fakhruddin
Judge

Sd/-
DHIRENDRA MISHRA
Judge